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UNCLAS HARARE 000361

SIPDIS

NSC FOR JENDAYI FRAZER
LONDON FOR CGURNEY
PARIS FOR CNEARY
NAIROBI FOR TPFLAUMER

E.O. 12958: N/A

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SUBJECT: ARREST OF HIGH COURT JUDGE

REF: HARARE 77

1. Police arrested High Court Judge Benjamin Paradza on February 16 in his chambers. They allege that Paradza contacted three fellow judges of the High Court in an effort to influence them to release a passport belonging to his business partner and friend Russell Wayne Luschagne, who is facing murder charges. Paradza has been charged with attempting to defeat the course of justice or, alternatively, trying to contravene the Prevention of Corruption Act. After spending a night in jail, he was released on Z\$20 000 (U.S.\$14) bail and asked to surrender his passport.

2. Jonathan Samkange, Paradza's lawyer, denied the charges in a conversation with us. According to Samkange, Paradza claims that Luschagne is not his business partner and that he had only urged his fellow Judges to schedule a trial date for Luschagne, whose murder trial has been pending for two years. Samkange believes the government is trying to humiliate the judge for ordering the mid-January release without charge of Harare Mayor Elias Mudzuri. As reported reftel, Mudzuri spent two nights in jail for trying to meet with his constituents without having sought police permission. Samkange reported that, two days after his ruling in the Mudzuri case, Paradza was visited by two Central Intelligence Organization (CIO) agents, who told him the Government was unhappy with his decision and intended to "embarrass him". In addition, Paradza received a number of threatening calls in the aftermath of his Mudzuri judgment.

3. Paradza's arrest elicited strong condemnations from members of the legal fraternity. In a public statement, the Legal Resources Foundation criticized the arrest and overnight detention as "unwarranted and high-handed" and maintained that an "internal inquiry" by the High Court Judge President should have been the first step in the process before criminal charges were brought. "The unseemly haste with which the Judge was arrested and detained is an affront to the dignity of the Office of Judge and creates in the minds of the public an unfortunate impression that Mr Justice Paradza is being harassed for making judicial pronouncements that have not been favorable to the authorities." The President of the Law Society of Zimbabwe, Sternford Moyo, agreed with the LRF assessment, telling us that precedent would dictate that an internal inquiry should have been conducted first. If evidence of wrongdoing were found, then, the Constitution provides the parameters for establishment of a tribunal to examine charges of judicial misconduct. Zimbabwe Lawyers for Human Rights also condemned the arrest and called for the Minister of Justice, Legal and Parliamentary Affairs "to carry out his legal duty to protect the integrity of the courts." Param Cumaraswamy, UN Special Rapporteur on the independence of judges and lawyers, criticized the humiliating treatment of Paradza in public remarks, saying it was "tantamount to intimidation of the gravest kind. This leaves a chilling effect on the independence of the judiciary."

Comment

4. The details of what crime Paradza is alleged to have committed are still fuzzy. It is possible he might have acted inappropriately. His arrest and detention by police, along with that of fellow High Court Judge Fergus Blackie last year, are unprecedented and suggest a new willingness by the Government of Zimbabwe to intimidate judges openly in order to ensure favorable judgments. In the only other two cases in recent memory in which High Court judges were accused of misconduct, special tribunals were established to investigate the charges. Neither judge was arrested in the meantime, and both continued to hear cases during the investigation. Although the state-controlled media insisted that Paradza's arrest was not politically motivated, the visit he received from the CIO agents and the threatening calls suggest otherwise. It appears as though the Government was strongly displeased by his ruling in the Mudzuri case and was determined to teach him a

lesson. That lesson likely will not be lost on Paddington Garwe, the judge presiding over the Morgan Tsvangirai treason case, and other colleagues on the bench.

SULLIVAN